IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4190 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

C U SHAH AROGYA BHARTI A PUBLIC TRUST

Versus

SAURASHTRA MAJDOOR SANGH

Appearance:

MR MANISH R BHATT for Petitioners

MR DH WAGHELA for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 20/02/97

ORAL JUDGEMENT

The petitioners have assailed the validity and legality of the award, dated 11.3.91, recorded by the Labour Court, Bhavnagar, in Reference (LCB) No.9/89 which came to be published on 3.5.91.

Both the petitioners are trusts and charitable

institutions. One of the activities of the trust is to run a medical centre known as T.M.Vadodaria Medical Centre at Botad, which has a capacity of 50 beds. Both the trusts are registered under the Bombay Public Trust Act. Petitioner No.2 trust has undertaken the management and administration of the said medical centre and hospital at Botad under an agreement dated 16.1.92. Pursuant to the said agreement, liabilities prior to the date of agreement will be that of petitioner No.1 Trust. The impugned award of the Labour Court is challenged by both the petitioners. By the said award, the Labour Court has directed the petitioner No.1 to pay the wages in accordance with 4th Pay Commission Recommendations as also other benefits with regard to uniform, washing allowance, leave and other items pertaining to service conditions.

Medical centres, at Botad, provide medical facilities at cheaper cost than the facilities available to the local inhabitants in private nursing homes. The rates charged are highly subsidised. It appears from the record that the main object and design of running of medical centres is to serve and cater to the medical facilities at cheaper rates to the local population. The trusts run the medical centres on donations and receive paltry income by way of service charges for the treatment of the patients. The trust is charging nominal charges for the treatment to the patients and therefore, it is running into losses. As of 1994-95, the accumulated losses came to Rs.22.60 lacs.

In view of the impugned award, the petitioner Trust is directed to pay wages to the employees in class III and class IV categories at par with 4th Pay Commission Recommendations with effect from 1.10.89.

The respondents workmen raised the demand for rise in wage in terms of the recommendations of the 4th Pay Commission and other benefits and perks. The petitioner trusts filed written statement inter alia contending that the demands of the Union are illegal and not maintainable. It was also contended that if the wages are allowed to be increased on the basis of the 4th Pay Commission recommendations, the trust will have to bear an additional burden of Rs.2.30 lacs per year which will add the the consistent losses made by the trust. The burden will be so heavy that the Trust will not be able to bear and the medical centres may be required to be closed down. It was also the case of the petitioner trust before the Labour Court that the workmen are paid minimum wages and allowances as are required to be paid

according to law. All the members of the staff and Class IV employees are given uniforms. They are also provided with washing allowances. The petitioner trust, therefore, opposed the additional demands made by the Union.

The Labour Court, Bhavnagar, after hearing the parties and considering the evidence on record passed the impugned award whereby the employees of the Trust are granted the wages and other perks and allowances as per the 4th Pay Commission recommendations. Hence this petition, at the instance of the employer-trusts.

On behalf of the petitioner-trusts, following contentions have been raised:

(1) That the Labour Court failed to appreciate that the petitioners are charitable organisations suffering huge losses and could not bear further financial burden.

(2) The wages paid to the employees of the petitioners were in excess of the minimum wages. The employees are also paid other allowances over and above the minimum on agreed terms with the employees from time to time.

(3) That the Labour Court has compared with the wages paid to the employees of private hospitals and that too of city areas as against the evidence produced by the petitioners in respect of Trimurty Hospital, Bavla and other comparable hospitals.

(4) That the Labour Court without any documentary evidence has wrongly relied on the deposition of one Gitaben Trivedi for the Union, In fact, in the cross-examination, said witness Smt.Gitaben has conceded that her wage was in excess of the minimum wage.

(5) That the Labour Court has failed to place reliance on the wage structure of similarly situated institutions who are paying only minimum wages.

(6) That the Labour Court should have appreciated that in such type of charitable institutions, additional financial burden would hamper the furtherance of the avowed objects of the trust.

The learned advocate appearing for the respondent workman has strongly opposed the aforesaid contentions. The following contentions were raised for the respondent workmen.

(1) That the impugned award granting higher wage structure and other benefits in terms of 4th Pay Commission are legal and valid.

(2) That the employees of the petitioner trust are entitled to the pay scales as per the 4th Pay Commission recommendations.

(3) That the scope of the petition is very much circumscribed and therefore, the petition should be dismissed and the impugned award of the Labour Court should be confirmed.

In order to appreciate the rival contentions, it would be appropriate to first consider the factual scenario emerging from the record of the present case.

Petitioner No.2 is a registered trust registered under Bombay Public Trusts Act, 1950. Petitioner No.2 is a newly, added party in the course of pendency of this petition. Petitioner No.1 is also a registered Trust and original opponent-employer.

By virtue of an agreement, dated 16.1.92, the petitioner no.2 trust has undertaken the management and the administration of D.M.Vadodaria medical centre and Hospital, at Botad, which was earlier run by petitioner No.1 trust. As per the said agreement, petitioner No.2 is not liable to pay any amount on any count whatsoever by way of consideration, compensation, remuneration, reimbursement, for discharge of any liability or obligation of petitioner No.1 trust.

It appears from the record that originally there were about 47 staff members working in different categories as x-ray technicians, ward boy, chowkidars, compounders, nurse, etc. Out of these 47 members of the staff, on account of voluntary retirement and retrenchment only 12 members of the staff were left in the employment of the hospital. Thus, there were hardly 12 employees of the trust hospital at the relevant time. It is also noticed that petitioner No.2 Trust has entered into a settlement with 8 of the members of the staff/workmen. The consent terms between the petitioner No.2 trust and the 8 workmen have been filed for modification of the Labour Court award. The said employees have also resigned from the

membership of the Union which was espousing their case before the Labour Court.

As a result of the settlement with 8 workmen, it was agreed that there will be an increase of 33 per cent in the wages with effect from 1.1.96. Besides, they will be entitled to dearness allowance and special allowance as may be fixed by the State Government from time to time. Considering the settlement to be just and valid, other staff members except 4 have signed the settlement. The 8 staff members who have agreed that since the settlement is just and proper, they will not pursue their claim arising out of the award challenged in this petition. It was also the case of petitioner No.2 trust that the workman are paid as per the Minimum Wages Act. There does not seem to be any dispute about this aspect. A copy of the settlement has already been produced on record for obtaining consent of other side.

In order to appreciate the merits of the impugned award and the challenge against it, it also would be expedient and proper, at this stage, to consider the relevant legal proposition and the various factors influencing the revision of pay and other monetary benefits and perks.

The wage structure and wage revision would obviously and directly depend upon the financial capacity of the establishment or the industry in question and other relevant aspects. The Labour Court has failed to appreciate the important aspects and factors for the purpose of deciding the wage fixation and other benefits.

Section 2(rr) of the Industrial Disputes Act, 1947 defines, the expression "wages". This definition is very important. It would, therefore, be expedient and profitable to consider it, which reads as under :

"(rr) 'wages' means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment, and includes -

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or

other amenity or of any service or of any concessional supply of foodgrains or other articles;

(iii) any travelling concession;

(iv) any commission payable on the promotion of sales or business or both;

but does not include --

(a) any bonus;
(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;
(c) any gratuity payable on the termination of his service;"

It could very well be seen from the aforesaid definition that it is an exhaustive one with both inclusive and exclusive clauses. Though the definition, elaborately, mentions the constituents of wage, it does not give as to what should be the size of a wage packet of different occupations in an industry nor does it show any means for calculating the same. Ordinarily, a wage packet to be relevant and to reflect the economic development. Socio-economic needs of the employees both as a workman and as a family person, the balance of economic growth to be blended into harmonious consensus so that both the industry and the workman not only survive but could grow. It is true that industrial adjudications over the past many years have evolved certain criteria and guidelines to arrive at this consensus which appeared to have stood the test of time.

The definition of 'wages' is in three parts. The first part defines wages to mean all remuneration capable of being expressed in terms of money which would if the term of employment express or implied were fulfilled be payable to a workman in respect of his employment or work done in such employment. The second part is designed to include something more than what the term primarily denotes. This part gives extended connotation by including certain payments, allowances and amenities in the ambit of definition. The third definition excludes three types of payment made by the employer (i) bonus, (ii) contribution towards pension or provident fund or any other benefits of the workman under the law for the

time being in force and (iii) gratuity payable on the termination of the service of a workman.

Broadly speaking the concept of wages can be articulated in 4 different following categories, (i) minimum wage, (ii) fair wage, (iii) living wage and (iv) need based minimum wage. The first category is covered by the provisions of Minimum Wages Act, 1948. Thus, the first category owes its origin to the provisions of Minimum Wages Act. The second has, generally, been used in industrial award and judicial pronouncements, whereas, the living wage and need based minimum wage are categorized and introduced in the reports of various committees.

The statutory definition of 'wages' includes allowances and other monetary remunerations, but excludes three types of payment made by the employer like (i) bonus, (ii) contribution towards pension or provident fund and (iii) gratuity payable on the termination of the service of a workman. Minimum wage is defined and quantified in the Minimum Wages Act, whereas, fair and living wage concept has not been statutorily defined.

The court is obliged to consider various factors and aspects while fixing the wage. Some of the important facts to be considered by the court or the appropriate authority may be mentioned at this stage, which are as follows:

(1) Condition of wages scales prevalent in the Company.

(2) Condition of the wage level prevalent in the industry in the region.

(3) The wage packet as a whole of each earner in the company with all incidental amenities and facilities.

(4) The position of the company viewed in relation to other comparable concerns in the industry and the region.

(5) Peremptive necessity for full neutralisation of the cost of living at the rock bottom of wage-scale if at or just above the subsistence level.

(6) The rate of neutralisation which is being given to the employees in each salary slab.

(7) Avoidance of huge distortion of wage differentials taking into reckoning all persons employed in the concern.

(8) Degree of sacrifice necessary even on the part of workers in general and public interest.

(9) The compulsive necessity of security social and distributive justice to the workmen.

(10) The capacity of the master to bear the additional burden.

(11) The effect of inflationary trend on the purchasing power of rupee .

(12) The interest of national economy.

(13) The impact and ramification of other industries and society as a whole.

(14) The state of the consumer price index at the time of decision.

The Committee on fair wages has defined three distinct level of wages, living wage, fair wage and minimum wage. The minium wage is the lowest wage in the scale below which the efficiency of a worker is likely to be impaired. Be it noted that the expression 'minimum wage' too is not fixed and static. It varies from time to time and place to place and at times industry to industry. It is bound to vary with the growth and development of national economy. As a matter of fact, the concept of 'minimum wages' has undergone a progressive change. Obviously, it would not be based upon the subsistence theory according to which minimum wage equals the cost of commodities necessary to feed and clothe the worker and his family.

The committee on fair wages has rightly reported that a minimum wage must provide not merely for the sustenance of life but for preservation of efficiency of the employees. For this purpose, the minimum wage must also accommodate some measure of education, medical requirements and amenities. It is also reported by the Committee that an establishment or an industry which is incapable of paying the minimum wage has no right to exist. In cases where the continued existence of such industry is imperative in the larger interest of the country, it was the responsibility of the State to take

steps to enable that industry to pay at least minimum wage. The Committee was also of the definite opinion that for fixing the minimum wage even regard should not be paid to the capacity of the employer or the industry to pay. As such, it should be solely based on the requirement of the worker and his family.

Standard of minimum wage laid down by the Committee was also adopted by the Supreme Court in holding that the minimum wage must provide not merely for the bare subsistence of life but also for the preservation of the efficiency of the worker and for this purpose the minimum wage must also provide for some measure of education, medical requirements and amenities and facilities. The recommendations of the Committee on fair wages that in awarding the minimum wage, the capacity of the employer to pay is irrelevant and when an industry cannot afford to pay minimum wage, it has no right to exist has also been emphasized in number of judicial decisions. It is held in many cases that minimum wage must be paid irrespective of the extent of profits, the financial conditions of the establishment or the industry or the availability of the workmen on lower wages. Thus minimum wages, independent of kind of industry, applies to all alike big or small. It thus sets the lowest limit below which the wages cannot be allowed to sink in all humility.

The passing of the Minimum Wages Act, 1948, is a landmark in the history of labour legislations in the country. This Act recognises that the wages cannot be allowed to determine entirely by the market force. The whole philosophy underlying the enactment of Minimum Wages Act is to prevent exploitation of labour through the payment of unduly low wages. The Minimum Wages Act aims at providing a structure of wage which at least preserves the efficiency of the employee. As per the report of the National Commission on Labour, the Legislature realised that if the rule of market was to prevail, it would be difficult to prevent sweating or exploitation of labour through payment of unduly low wages and with a view to check this position that the Act was enacted and specific provisions were made for determining minimum wages in respect of scheduled industries. Once the minimum wages is, statutorily, determined and prescribed under the Act, it is, obligatory, for the employer to follow and pay the said wage and it is absolute.

The following recommendations of the National Commission of Labour in connection with fixing of minimum wages are apposite :

"The minimum wage may thus vary from region to region and even within the same region from time to time depending on particular situations. Prescribing some rigid criteria in regard to minimum wage fixation is, therefore, neither feasible nor desirable. It will necessarily have to be left flexible. We are further of the opinion that laying down a rigid cash equivalent of the content of the statutory minimum wage whose coverage is essentially transitional under conditions of development would not serve any useful purpose."

The concept of fair wage shows that the wage is something above the minimum wage and something less or below the living wage. In Kamani Metals & Alloys Ltd v. Their Workmen, (1967) 2 LLJ 55 (SC), the Supreme Court has observed that "fair wage lies between the minimum wage which must be paid in any event and the living wage which is the goal". In Express Newspapers (P) Ltd v. Union of India, (1961) 1 LLJ 339 (SC), the Supreme Court has described fair wage as a "mean between the living wage and the minimum wage".

The rate of wages prevailing in an occupation as 'fair' if it is about on level with the average payment for tasks in other trades which are of equal difficulty and disagreeableness which require equally rare natural abilities and an equally expensive training. The fair wage must also take note of the economic reality of the situation and the minimum needs of the worker having a fair sized family with an eye to the preservation of his efficiency as a worker. It can, therefore, be concluded that the concept of fair wage involves a rate sufficiently high to enable the worker to provide a standard family with food, shelter, clothing, medical care and education of children appropriate to his status in life but not at a rate exceeding the wage earning capacity of the class of establishment concerned. But only such of the items which go directly to reduce the expenditure that would otherwise go into the family budget are relevant in fixing fair wage. As time passes and prices rise even the fair wage fixed for the time-being tends to sag downwards and then a revision becomes obvious and obligatory. A fair wage is, therefore, related to the earning capacity and pressure of work and workload. It must be remembered very well that fair wage is not 'living wage' by which is meant a wage which is sufficient to provide not only the essentials above mentioned but a fair measure of frugal

comfort with an ability to provide for December days of life and evil days. Fair wage lies between the minimum wage which must be paid in any event and the living wage which is the goal. Thus, while the lower limit of fair wage must, obviously, be minimum wage, the upper limit is equally set by what may, broadly, be called the capacity of the industry to pay. The capacity of a particular industry in a specified region should be taken into account to determine 'the capacity to pay and this in turn could be ascertained by taking a fair cross section of the industry in the region concerned. It was, therefore, accepted by the Committee that the present level of our national income does not permit of payment of a 'living wage' on standards prevalent in more advanced and developed countries and regions. It must, therefore, be remembered that capacity to pay of the industry and also the financial status and the position of the industry or an establishment or an employer are very relevant factors in determining the 'fair wage'.

No doubt, the concept of living wage which has influenced the fixation of wages, statutorily, or otherwise in all economically advanced countries is an old and well established one. The expression 'living wage' has a wide connotation. The 'living wage' means an amount of wage which should not only provide essentials contemplated by the 'fair wage' but should also be sufficient to provide for a fair measure of frugal comfort with an ability to provide for old-age and evil days. The 'living wage', according to the Committee on Fair Wages, represented the higher level of wage and, naturally, it would include all amenities which a citizen living in modern civilised society is entitled to when the economy of the country is sufficiently advanced and the employer is able to meet the expanding aspirations of his workers. It is, therefore, rightly said that its pursuit belongs to the same category as 'squaring the circle'.

In Hindustan Times Ltd v. Their Workmen, (1963) I LLJ 108 (SC), the Supreme Court has observed that "while the industrial adjudication will be happy to fix a wage-structure which would give the workmen generally a living wage, economic considerations make that only a dream for the future. That is why the Industrial Tribunals in this country generally confine their horizon to the target of fixing a fair wage". Later in All India Reserve Bank Employees' Association vs. Reserve Bank of India, (1965) II LLJ 175 (SC), the Supreme Court has observed that "..... our political aim is 'living wage' though in actual practice living wage has been an ideal which has eluded our efforts like an ever-receding

horizon and will so remain for sometime to come. Our general wage structure has at best reached the lower levels of fair wage though some employers are paying much higher wages than the general average".

In Hindustan Antibiotics Ltd v. Their Workmen, (1967) 1 LLJ 114, the Supreme Court has, however, struck an optimistic note that prosperity in the country would help to improve the conditions of labour and the standard of life of the labour can be progressively raised from the stage of minimum wage, passing through need-found wage, fair wage, to living wage. It is true that even the principles enshrined in the Constitution make it obligatory to the State to strive and secure living wage for the working class. This may, however, become difficult at one stroke for, the interest of the industry and its survival is as important as the betterment of the standard of living of the working class. All the same, unless there is a continuous and progressive trend towards securing better living conditions for labour which would necessarily in its turn call for a determination of progressive higher minimum wage.

Living wage has been thus promised to the workers under the Constitution. A socialist framework to enable the working people a decent standard of life , has further been promised by the 42nd Amendment. The workers are hopefully looking forward to achieve the said ideal. The promises are piling-up but the day of fulfillment is nowhere in sight. Industrial wage, looking as a whole, has not yet risen higher than the level of minimum wage.

It has also been observed in number of cases by the Apex Court that the horizon of Articles 14 and 21 has been widened by various judicial decisions. Any action of the State which is unfair and unjust falls foul of the guarantee of Article 14 of the Constitution. Principles of natural justice is also considered a facet of the guarantee under Article 14. The right of the employees to get a proper pay scale can no longer be denied having regard to the ever expanding sweep of Article 21. The matter of pay scale of workers has to be tested on the anvil of social justice which is the live fibre of our society. It has ceased to be a matter of contract between an employer and an employee and it has become almost like a mandate.

After having thrown into scales and the concept of different wages and the substratum of different decisions of the Apex Court and High Courts, minimum wage to an employee is a must, there should be a serious endeavour

and effort to pay fair wage and it would be ideal if the living wage is paid. Undoubtedly, the question of considering the capacity to pay of an industry or the financial position of an employer plays very important role in fixing fair wage and living wage unlike minimum wage. Minimum wage is an obligation of an employer and a statutory guarantee to the employee. Capacity to pay or the financial status of an employer does not matter in making and paying minimum wage. Whereas in case of fixing and paying the fair wage or the living wage, the capacity to pay of an employer, or an industry or an establishment or the financial status of an employer plays very important role. There is no dispute about the fact that the capacity of master, financial status of an employer and the capacity to bear the additional burden ought to be taken into consideration while fixing or examining the concept of fair wage. So is not the position in case of minimum wage. No employer would be allowed to contend, no industry would be allowed to raise the plea that minimum wage cannot be paid for want of funds or financial position. Unlike that, the same will be very important in fixing or pay the fair wage or a living wage. The adjudicating authority or the wage fixing machinery has to strike a balance while fixing the fair wage and living wage between the requirements and the standards of employees and the paying capacity, financial position and the status of industry, master, establishment or the employer.

In formulating the wage structure and deciding the wage policy, the Court is obliged to consider and also to reconcile the following divergent and conflicting interests, according to the settled position of law:

(1) The natural and just claims of the employees for fair and higher wage.

(2) The financial capacity of the employer.

(3) The legitimate desire of the employer to make a reasonable profit.

(4) The rise in price-structure which may result from the fixation of a wage-structure; and

(5) The reasonableness of the additional burden which may be imposed upon the consumer by the wage-structure.

It is, therefore, considered that the process of fixation of wage structure is always a delicate and difficult task

as balance has to be struck between the demands of social justice which require that the workmen should receive their proper share of the national income which they help to produce, with a view to improving their standard of living the depletion which every increase in wages makes in the profits, as this tends to divert capital from industry into other channels thought to be more profitable. In formulating a wage structure in a given case, the industrial adjudication does take into account, to some extent, considerations of right and wrong, propriety and impropriety, fairness and unfairness. The task is very responsible, as it presents several difficulties and delicate problems. In balancing the conflicting interests of the employer, the employees and the public, the adjudicator has a delicate job of weighing; and it is a three -- and not a two pan scale. This is, obviously, difficult task. The court or the adjudicator has to reconcile a head-on clash of various, very basic policies and interests, namely, freedom of contract, freedom of trade, sanctity of contract, individual liberty, protection of business, right of work, making of training available to the employees , earning of livelihood for oneself and family, utilisation of one's skill and talent, continued productivity, betterment of one's status, avoidance of one's becoming a public charge, encouragement of competition and discouragement of monopoly and international trade etc. The National Commission on Labour has stated in its report that the right of the workers for a fair standard, the claim of the industry for expansion through its own surplus, the charges on the industry for public revenues, the need of the economy for resources and the need of the consumer to get supplies at stable and fair prices, all become relevant factors which an industrial adjudicator has to bear in mind.

The relevant factors for wage fixation must be borne in mind and, broadly speaking, by the Court or an authority for fixing the wage structure and to balance the scale putting into it certain aspects. In favour of fixing a better or higher wage-structure the following points have to be borne in mind:

(i Better living conditions for workmen can only be possible by giving them a living wage which in turn will tend to increase the national wealth and income.

(ii) Higher wages nearing living wage would appreciably increase the efficiency of workmen by enabling them to live in fair comfort and

discharge their obligations to the members of their families.

(iii) A wage-structure nearing 'living wage' would be conducive to harmony and peace in the industry.

(iv) Claim of social justice and national economy to secure to workmen a fair share of national income which they have to produce.

(v) The requirement of workman's living wage in a civilised and progressive society.

For counter-balancing the above considerations, the following points aspects also must be kept in mind in favour of keeping the wage-structure at a reasonable standard of level:

(i) Unreasonable inroads into the profits of the employer may have the tendency to drive capital away from fruitful employment and may prejudicially affect capital formation.

(ii) Wage structure which is beyond the financial capacity of the employer to bear, may lead to the closure of the industry itself.

(iii) Wage-structure being a long-range plan, a long range view of the financial capacity of the industry should be taken into consideration.

(iv) In considering increase in wage, the increase should be correlated to minimum wage in relation to the financial capacity of the industry to bear the burden.

(v) The effect of increase on other similar industries in the region should be taken into consideration, i.e. wage-structure should take into consideration the industry-cum-region basis after giving careful consideration to the ability of the industry to pay.

(vi) The total pay-packet of the workmen including the dearness allowances, other allowances and other benefits enjoyed by them.

(vii) The effect of rise in prices on the international trade of the country.

In short, the industrial adjudicator or the Court

concerned has an obligation to consider all the relevant facts and circumstances and the aspects enumerated hereinbefore and after addressing itself to such various aspects and circumstances has to strike a just balance so that the interest of neither of the labour community nor the interest of the industry is jeopardised or is adversely affected. It is, rightly, therefore, said that the process of fixation of the structure of wage is not only delicate but also difficult and therefore, the industrial adjudicator or the competent court after addressing itself to the aforesaid aspects and circumstances has to draw a line which would subserve the object of the concept of wage under section 2(rr) and the interest of the labour as also the interest of the management.

At times by overlooking or showing the tendency of indifference to one of the aspects enumerated hereinbefore, harm is caused more than what is sought to be gained by fixing wages. It is, therefore, said at times in such a situation that this world has suffered much pain and cruelty from doing what we believe it to be right rather than from doing what we believe it to be wrong. It is in this context, we shall have to analyse and appreciate the facts and circumstances of the present case and we shall have to ascertain as to whether the wage fixed by the court below and questioned before this court is justified or not.

Both the petitioner trusts are charitable institutions. Petitioner No.1, was running a medical centre known as T.M.Vadodariya Medical Centre at Botad. As it is noticed from the record, as a part of implementing and executing and carrying out its objects to serve the larger cause of the ailing public in a small place like, Botad, in Bhavnagar District, and surrounding areas of Botad, the petitioner No.2 trust undertook the management and administration of the said medical centres and hospital under an agreement dated 16.1.92. By virtue of the agreement, the liabilities prior to the date of the agreement will be that of petitioner No.1 trust. The pronounced purpose and avowed object of the charitable trust of the petitioner No.1 trust has been mentioned in para 3 of the petition. The avowed charitable objects of the petitioner No.2 trust have also been, elaborately, articulated in the affidavits.

The challenge in focus in the present petition is against the award of the Labour Court dated 11.3.91 in Reference (LCD) No.9/89. By virtue of the impugned award of the Labour Court, the petitioner No.1. trust is directed to

pay the wages in accordance with the 4th Pay Commission recommendations as also other benefits with regard to uniform, washing allowance and leaves, etc.

There is no dispute about the fact that the petitioners have been paying paying minimum ages and other allowances as per the Government scales and in some cases the wages paid to the employees by the petitioner trusts are higher thereto. A comparative chart of wages paid to the employees and payable under Minimum Wages Act has been placed on record. In some cases, the amount paid to some of the employees is almost double than the minimum wage under the Minimum Wages Act.

The medical centres under the management of the petitioner trust provide medical facilities and care at much cheaper rates than the facilities available to the local inhabitants in private nursing homes. The rates of fees charged are also highly subsidized as found from the record of the present case. It appears, clearly, that the object of running the medical centre is to serve and provide medical facilities at cheaper rates to the local population. There is also no dispute about the fact that the petitioner Trusts run the medical centres and hospital on donations and they receive only paltry income by way of service charges for the medical aid and assistance and treatment given to the patients. It is also, clearly, found from the record of the present case that the medical centres and hospital are running into loss. There is also no dispute about the fact that as of 1994-95 the accumulated losses came to an astounding figure of Rs.22.60 lacs. A statement showing the amount of loss year-wise has also been placed on record which is not disputed.

It could very well be seen from the aforesaid facts and circumstances that the Labour Court failed to appreciate various aspects including the paying capacity and the financial status of the petitioner trusts. The medical centres and hospital are run despite heavy losses. Social service appears to be the motto. Nominal medical charges are levied from the patients. The medical centres and the hospital, unfortunately, do not have sufficient funds and resources though a good object is carried out by the charitable institutions like the petitioners.

After having examined the facts and circumstances emerging from the record of the present case and having heard the rival versions raised by the learned advocates for the parties, following aspects are not properly taken

into consideration and not examined in the proper perspectives requiring interference by this Court exercising its discretionary powers under the writ jurisdiction.

(1) The Labour Court has, unfortunately, failed to place reliance on the similarly situated institutions who are paying only minimum wages to its employees. Certificates, whereof, were already placed on record of the Labour Court. Copies have also been produced in this petition.

(2) That the Labour Court ought to have considered and examined that in such type of charitable institutions additional leave could not be granted which would create hindrance and hamper and medical aids and care to the community and the resultant hurdle in furthering the objects of the petitioner-trusts. The Labour Court ought to have considered whether, as such, there was requirement for the direction for providing uniform to one and all concerned more so, when some of the employees are provided with uniforms who are required to be given uniforms.

(3) That the Labour Court has committed serious error in placing reliance on the testimony of witness Gitaben Trivedi for the Union without any supporting documentary evidence. Be it noted that witness Gitaben has admitted during the course of her cross-examination that her wage was in excess of minimum wage.

(4) That the Labour Court manifestly fell in error in placing reliance on the structure of wage provided in some institutions which are not charitable and which are given 90 per cent grant by the Government.

(5) That the evidence of witness Gitaben is also vulnerable as she failed to show and substantiate the monetary status and financial position of the medical centres. Her evidence should not have been relied straightway to show that the financial position of the petitioner trust was sound and healthy.

(6) It appears that the Labour Court has erred in not placing reliance on the testimony of Chandulal Dani. It is very clear from his testimony that if the demands made by the employees are fully

met, it will result into huge financial burden and set back. It would not be possible to raise the fees charged by the medical centres from the patients corresponding to the likely or anticipated additional burden arising out of the said demands of the employees which are far more than minimum wages.

(7) That the Labour Court ought to have considered there there is no rise in the rate of fees charged by the petitioner trust since last more than a decade except in the department of radiology.

(8) That the Labour Court has failed to consider and appreciate the wage structure prevalent in similarly situated institutions who are paying only minimum wages, certificates, thereof, are already on record and copies thereof are also produced in the record of this petition.

(9) That the Labour Court ought to have examined and appreciated that in a small place like Botad which is a village more donations would not be available. The service charges for the treatment recovered from the patients are almost nominal compared to the private medical centres.

(10) That the Labour Court ought to have considered that the petitioner trusts are charitable organisations and suffering from the financial sickness for keeping better health of poor villagers and the avowed object and purpose is only to provide cheaper and better medical aid and care to sick poor villagers.

It was, therefore, necessary in this context to examine whether to what extent the additional burden could be saddled with by the petitioner. If this aspect is lost sight of, it may create a counter-productive outcome. The wages paid to the employees of the petitioner trusts are in excess of minimum wages. The employees are also given allowances over and above minimum wages. It was necessary to consider for the Labour Court as to whether it was expedient and desirable to saddle the petitioner trusts with the additional financial burden to the extend to satisfy all the demands raised by the employees. One cannot be oblivious to the financial status and position of the employer. The capacity to pay cannot be ignored. It appears that the Labour Court has not considered this aspect in its proper perspective.

That the Labour Court could have considered whether it is proper and justified action in comparing the wages paid to the employees of the private nursing home and hospitals and that too in city areas as against the evidence of the petitioner on record in respect of Trimurty hospital, Bawla, District Ahmedabad, Smt. Santokba Bhagwati General Hospital, Dholka, Dist: Ahmedabad, Smt. Satguna C.U.Shah Womens Hospital and Maternity Home, Wadhwan and Joravarnagar Vikas Mandal, at Joravarnagar, Dt: Surendranagar. These centres are comparable institutions or not, these institutions are situated in comparable regions or not have not been disputed. This aspect aspect has not been looked into in its proper perspective. Thus there is misreading of evidence and ignoring relevant record.

The petitioner trusts have engaged five doctors who are M.D., M.S. etc. possessing higher and post-graduate qualifications. There are 3 doctors who are M.B.B.S. and one doctor possessing degree of BAMS. There were 9 nurses, 1 compounder, 3 clerks and 4 technicians. There were about 20 staff members in Class IV. It was an admitted fact that the wages were paid to Class III and Class IV employees as per the provisions of the Minimum Wages Act and in fact some of them were paid more than that. The medical centres are run by the trusts mainly on donations and nominal amount by way service charge collected from the patients.

According to the case of the petitioner trusts, staff members are paid more than the minimum wage despite week financial condition of the trusts and therefore, it is contended that the demands of the Union and the claim for wages on the basis of 4th Pay Commission Recommendations are not just, proper and legal. It is not disputed that the petitioner trust shall have to bear an additional burden per year of Rs.2.30 lakhs which would add to the consistent loss made by the petitioner. Therefore, the petitioner trusts have contended from the inception that the additional burden will be so heavy that the trust will not be able to bear the same and the medical centre may be required to be closed down. There is no dispute about the fact that all the members of the staff of Class IV are given uniforms and washing allowances. It is very clear from the record and particularly from the evidence of witness Chandubhai Dani, Hon. Secretary of the trust that the medical centre and the hospital are run since last 12 years even though there has been consistent losses only with a view to fulfil the avowed object and purpose of providing medical service and care to the poor

village people mainly residing in Botad and around where there is no other such medical facilities. The hospital started getting grant only last since 8 years and that is not covering the full expenditure. Before it started getting grant, the accumulated loss went to more than Rs.20 lacs. The petitioners have produced on record of the Labour Court the balance sheet for three years. The said balance sheets have consistently shown that there were losses. The assets of the trust consist of a building, furniture etc. The estimated depreciated value of which will be about Rs.30,50,000/-. The liability per year on account of salary and other expenses is about Rs.12 lacs. The flow of donations is not consistent. It is, therefore, the case of the petitioner trust that additional burden will be a great hardship and may cause hindrance in running the medical centre and the hospital and it may also lead to closure. It is in this context, the petitioner trusts have challenged the demands raised by the employees.

One more contention raised on behalf of the petitioner is with regard to the settlement with 8 staff members who are given substantial rise in their wages. In view of the settlement so arrived at between the petitioner and 8 employees, a request was made to this Court to modify the award to that extent and make a note that those employees do not wish to pursue the adjudication in terms of the settlement. It was also submitted that in view of aforesaid settlement, the said settlement binds the rest of the employees. It is, therefore, the case of the petitioner trust that the impugned order and award dated 11.3.91 of the Labour Court, Bhavnagar in Reference No.(LCD) No.9/89 is not legal and valid and is required to be quashed and set aside.

On behalf of the respondents workmen, learned advocate Mr Waghela has, forcefully, contended that the workmen are entitled to better wages and perks at par with the 4th Pay Commission recommendations with effect from 1.10.89. He has fully supported the impugned order and the award of the Labour Court. It is also canvassed by him that the present petition is essentially under Article 227 of the Constitution of India wherein the jurisdictional scope is circumscribed and the award of the Labour Court is final and binding under section 17(2) of the Industrial Disputes Act, 1947 based on facts. He has also placed reliance on the evidence adduced by the parties before the Labour Court and has contended that the impugned award is quite just, legal and acceptable and therefore he has prayed for dismissal of the petition. Learned advocate Mr Bhatt for the petitioner

has seriously challenged such submissions relying on above facts.

After having considered the facts and circumstances emerging from the record of the present case and the impugned award of the Labour Court, it appears that the Labour Court has failed to appreciate many aspects which are enumerated hereinbefore in general and the financial status and capacity to pay of the employer in particular. It cannot be gainsaid that the considerations which weigh with the Government while finalising the wage policy, salary structure and the report of the experts are not the same for a private employer and more so in a case of benevolent charitable institutional trusts employers.

Both the parties have placed reliance on case law. It would be, therefore, interesting and appropriate to refer the relevant decisions relied on during the course of submissions.

The Apex Court in a Constitutional Bench, in Express Newspapers (P) Ltd. & anr. vs. Union of India & ors. (1961) I LLJ 341 has emphasized the principles of fixation of rates of wages. They are as follows :

(1) that in the fixation of rates of wages which include within its compass the fixation of scales of wages also, the capacity of the industry to pay is one of the essential circumstances to be taken into consideration except in case of bare subsistence or minimum wages where the employer is bound to pay the same irrespective of such capacity;

(2) that the capacity of the industry to pay is to be considered on an industry-cum-region basis after taking fair cross section of the industry; and

(3) that the proper measure for gauging the capacity of the industry to pay should take into account the elasticity of demand for the product, the possibility of tightening up the organisation so that the industry could pay higher wages without difficulty and the possibility of increase in the efficiency of the lowest paid workers resulting in increase in production considered in conjunction with the elasticity of demand for the product, no doubt against the ultimate background that the burden of the increased rate should not be such as to drive the employer out of business and resultant closure.

It could very well be visualised from the aforesaid observations of their Lordships that after stating and categorising broadly the classification of wages in the said decision that in a case like the one on hand where minimum wage is paid and while considering the issue of higher wages, it is incumbent upon the authority, Tribunal or Court to consider the capacity to pay and the financial position of the employer and the industry. This aspect in the present case is, unfortunately, not examined and appreciated by the Labour Court in its proper perspective. The Labour Court ought to have appreciated the celebrated principles enunciated by the Supreme Court.

In Ahmedabad Millowners Association v. Textile Labour Association, (1966) 1 LLJ 1, it has been clearly held that broad and overall view of the financial position of the employer must be taken into account and attempt should always be made to reconcile the natural and just claims of the employees for a fair and higher wage with the capacity of the employer to pay it and in determining such capacity, allowance must be made for a legitimate desire of the employer to make a reasonable profit. In this connection, it may also be permissible to take into account the extent of the rise in price-structure which may result from the fixation of wage structure, and the reasonableness of the additional burden which may thereby be imposed upon the consumer. That is one aspect of the matter which is relevant. Not only that, it is also observed that it is true that normally, once a wage-structure is fixed, employees are reluctant to face a reduction in the content of their wage packet; but like all major problems associated with industrial adjudication, the decision of this problem must also be based on the major consideration that the conflicting claims of labour and capital must be harmonized on a reasonable basis and so, if it appears that the employer cannot really bear the burden of the increasing wage bill, industrial adjudication, on principle, cannot refuse to examine the employer's case and should not hesitate to give him relief if it is satisfied that if such relief is not given, the employer may have to close down his business.

The Supreme Court in Gramaphone Company Ltd v. Its Workmen, (1964) 2 LLJ 131 has held that if the industry is in stable condition, burden of provident fund and gratuity does not result in loss to the employer, that burden will be borne by the employer like the burden of wage structure. Thus, it is held that financial position

to bear the additional real burden must be borne in mind.

In Workmen of Gujarat Electricity Board v. Gujarat Electricity Board, (1969) 2 LLJ 791, it has been held that financial capacity as a relevant factor in determining the the additional burden to be borne by the employer . In that case, the Electricity Board taking over initially and also incurring heavy loss subsequently and existing emoluments were not falling below minimum wages, must be considered. It was further held that while deciding the profits apart from including expenditure incurred for the commercial activities, the expenditure incurred for the promotional activities for development also should be taken into consideration. It cannot also be contended that revenue can be raised more or income can be generated by raising the standard of fees in the light of the facts of the present case. The avowed purpose of the petitioner trust is to provide subsidized and cheap medical care and facility to the poor villagers. Apart from that it may not be prudent and expedient to raise the rate of fees to be charged from patients. The petitioner trust is already incurring heavy loss. There was accumulated loss of more than 20 lacs even in the year 1989-90. It was, therefore, pleaded that it was not possible for the Trust to bear any additional burden.

In Press Trust of India vs. Union of India, 1974 Lab. I.C. 716, it was held that if the wage recommended would impose heavy financial burden on the industry, the recommendation would not be valid. It was a matter under Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955. It was also held that the wage fixed by the Wage Board beyond capacity of the news agency like PTI, it would not be a valid recommendation. Similarly, a Bench of three Hon'ble Judges of the Apex Court in Management v. G.S.Barot, Industrial Court, (1979) 2 LLJ 383, it was clearly held that in determining the capacity of the industry to bear the burden, all relevant factors will have to be taken into account and the actual state of affairs determined. The procedure adopted by the industry to determine the financial capacity for other purposes may not be relevant. It can not be taken as a hard and fast rule that provision for depreciation; development rebate, and tax liabilities should never be allowed. While the preservation of the industry is paramount the attempts of the management to show that the company is running at a loss by boosting the depreciation allowance, etc., should not be permitted. However, it was clearly held that the real capacity of the industry to bear the extra burden

will have to be determined. It was also observed that dearness allowance is intended to neutralise a portion of the increase in the cost of living. Though 100 per cent neutralisation is not advisable as it will lead to inflation, full neutalisation may be permissible only in the case of the lowest class of employees.

The legal position is very well established that fixation of wages and dearness allowance has to be done on an industry-cum-region basis and also having regard to the financial capacity of the industry and the employer. This principle is also, clearly, upheld by the Hon'ble Supreme Court in Unichem Laboratories Limited v. Workmen, (1972) 1 LLJ 576. In the said decision, various factors to be taken into account for the purpose of a unit being treated as a comparable one as laid down have been considered and the principles relevant for fixation for wage and dearness allowance are also elaborately examined.

In S.F.A.L. Workmen vs. Industrial Court, AIR 1978 SC 1113, the Supreme Court has held that for determining the wages, the paying capacity of the employer is required to be considered and for that purpose the employer can be classified according to his paying capacity considering the principle laid down in Unichem Laboratories (supra).

The Supreme Court in Workmen vs. Management of Reptakos Brett & Co. Ltd. 1992 Lab. I.C. 289, has, broadly, highlighted that wage structure can be divided into three categories, basic minimum wages which provides bare subsistence and is at poverty-line level, a little above is the 'fair wage' and finally the 'living wage' which comes at a comfort level. It is not possible to demarcate these levels of wage structure with any precision. There are, however, well accepted norms which broadly distinguish one category of pay structure from another. The factors which are to be taken into consideration for fixing the minimum wage are also examined elaborately. It is also held that the financial position of the employer and the industry must be taken into consideration while fixing the wage structure. The employees are entitled to minimum wage at all times under all the circumstances. Therefore, an employer cannot be allowed to contend that his financial position is not such that he could pay the minimum wage. It is in this context it has been held that an employer who cannot pay the minimum wage has no right to engage labour and has no justification to run the industry. Thus it emerges from the aforesaid decision that the capacity to pay of the employer and the financial position of the industry ought

to be taken into consideration in a case where the minimum wage is paid to the employees and fair wage or living wage is demanded. Admittedly, in the present case, the minimum wage is paid to all the employees. Not only that, in some cases, more than minimum wage amount are paid and in some cases the wage is almost doubt than the minimum wage prescribed.

It could very well be seen from the aforesaid discussions of the case law that the financial capacity of the employer plays a very important role and is required to be taken into consideration for fixing the wage structure or for the revision thereof. The Labour Court, unfortunately, has failed to appreciate these aspects in its proper perspective. The petitioner Trusts are incurring heavy loss every year since 1988-89. The accumulated losses till 1994-95 is Rs.24,59,969.89 ps. as per the statement showing total loss during the period from 19088-89 to 1994-95, which is not disputed.

The Labour Court has also taken into consideration the wages of some units which are not comparable and has failed to take into consideration the wages prevalent in comparable units in the region. The demands of the employees was to get wages as per the recommendations of the 4th Pay Commission. The undisputed fact is that the petitioner trusts are paying wages to the employees equivalent to 70 per cent of the wages recommended by the 4th Pay Commission. It was, therefore, incumbent upon the Labour Court to assess and analysis whether it was possible for the employer to bear the additional burden of 30 per cent when accumulated loss went to nearly 25 lakhs. It is also not disputed that since more than 9 years, the petitioner trusts have been incurring losses. No doubt, the ultimate anxiety as per the constitutional goal and mandate would be to provide comfortable living wage. But the question is whether it is possible for the industry or the employer to bear the additional burden without closing down the industry or the unit. If the industry or the establishment is making profit, it would be different consideration to review and revise the wage structure from minimum wage to fair wage or living wage. Where the financial position is very much stringent and vulnerable having accumulated loss to the tune or Rs.25 lakhs, for an establishment or a unit which has the only avowed object to provide better, easy and cheaper medical care and treatment to poor and unsophisticated villagers. Even in case of a profit making concern, the Court has to consider various aspects and factors in determining the wage-structure. A goose giving golden eggs cannot be killed.

Be that as it may. Since there are several aspects other than the capacity to pay of the employer and the financial position of the industry which have also not been examined in the proper perspective, instead of deciding and determining the merits of the present petition, it would be just and reasonable to remand the matter to the Labour Court to adjudicate upon afresh the reference raising the industrial dispute in the light of the aforesaid relevant considerations, criteria, guidelines and the relevant proposition of law so that a just balance can be struck between the interest of the employees and the interest of the industry and the unit like that the petitioner trusts which are charitable trusts engaged in translating a pronounced object and avowed design to provide easy and cheap medical care and facilities and better and higher treatment to the ailing patients coming from Botad and other villages who are predominantly coming from poor and downtrodden strata of the society.

There are also further and later developments which also prompt this Court to remand the matter. For example, 8 employees of the trust have settled the dispute with the petitioner trusts. Out of 14 employees, eight employees have also withdrawn their demands. The consent terms filed are duly signed along with the settlement made between the majority of the employees and the petitioner trust. What is the effect of such a settlement ? Would it be binding on rest of the employees? These are some of the questions which are also required to be examined and adjudicated upon. It would therefore, be advisable to remand the matter instead of examining and investigating those facts in an extraordinary writ jurisdiction.

There is no dispute about the fact that by virtue of the said settlement placed on record during the course of the proceedings of this petition, majority of the employees and the employer have agreed that there should be increase and rise of 33 per cent of salary in the existing wages. Thus the wage structure is enhanced and revised by settlement to the extent of 33 per cent of the existing wages. Over and above, various other facilities and perks including the leave period, shift timings etc. are provided. The Labour Court, therefore, will have to consider these aspects as subsequent events and later developments which have material bearing on the demands, disputes and decisions.

In the result, impugned order and award shall stand

quashed and set aside. The matter is, therefore, remitted to the Labour Court for consideration and adjudication afresh after quashing the impugned award. The Labour Court is, therefore, directed to determine and decide the dispute afresh after hearing the parties in accordance with law keeping in my aforesaid discussions, directions and guidlines and relevant propositions of law as early as possible. There shall be no order as to costs. Rule made absolute accordingly.

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